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GENERAL STATUTES OF NORTH CAROLINA

RULES

PREPARED UNDER THE SUPERVISION OF THE DEPARTMENT OF JUSTICE
OF THE STATE OF NORTH CAROLINA

Annotated, under the Supervision of the Department of Justice,
by the Editorial Staff of the Publishers

Under the Direction of

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AND K.S. MAWYER

JUNE 1985 SUPPLEMENT

Place Inside Back Cover of 1984 Rules Volume.

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PREFACE

This June 1985 Supplement to the 1984 Rules Replacement Volume contains provisions of the rules set out in the Replacement Volume which have been added, amended, or deleted by orders promulgated since publication of the 1984 Replacement Volume through May 1, 1985. It also contains annotations supplemental to those appearing in the 1984 Replacement Volume. For a complete scope of the contents of the 1984 Replacement Volume, see page iii thereof.

This supplement has been prepared and published under the supervision of the Department of Justice of the State of North Carolina. The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes, and any suggestions they may have for improving them, to the Department.

LACY H. THORNBURG
Attorney General

June 1, 1985

Annotations:

Source of annotations to the rules of practice in all courts:

North Carolina Reports through Volume 312, p. 800.

North Carolina Court of Appeals Reports through Volume 71, p. 810.

South Eastern Reporter 2nd Series through Volume 327, p. 167.

Federal Reporter 2nd Series through Volume 756, p. 90.

Bankruptcy Reports through Volume 46, p. 780.

Federal Supplement through Volume 603, p. 466.

Federal Rules Decisions through Volume 104, p. 206.

Supreme Court Reporter through Volume 105, p. 1784.

North Carolina Law Review through Volume 63, p. 562.

Wake Forest Law Review through Volume 20, p. 54.

Campbell Law Review through Volume 7, p. 118.

Duke Law Journal through 1983, p. 1142.

North Carolina Central Law Journal through Volume 14, p. 680.

Opinions of the Attorney General.

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GENERAL RULES OF PRACTICE FOR THE SUPERIOR AND DISTRICT COURTS

2. Calendaring of Civil Cases.

CASE NOTES

Applied in Callaway v. Freeman, — N.C. App. —, 322 S.E.2d 432 (1984).

Cited in Simmons v. Tuttle, — N.C. App. —, 318 S.E.2d 847 (1984).

19. Recordari; Supersedeas; Certiorari.

CASE NOTES

Cited in State ex rel. Edmisten v. Tucker, — N.C. —, 323 S.E.2d 294 (1984).

21. Jury Instruction Conference.

CASE NOTES

Section 15A-1231 and this rule require the trial court to hold an unrecorded conference in every case and a recorded conference when

requested by either party. State v. Clark, — N.C. App. —, 322 S.E.2d 176 (1984).

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ORDER CONCERNING ELECTRONIC MEDIA AND STILL PHOTOGRAPHY COVERAGE OF PUBLIC JUDICIAL PROCEEDINGS

Editor's Note. — The order concerning electronic media and still photography coverage of public judicial proceedings, adopted by the Supreme Court on September 21, 1982, as amended November 10, 1982, was extended through and including December 31, 1985, by

order of the Supreme Court of December 19, 1984, provided that at least twelve trials shall be televised during the period January 1, 1985, through October 31, 1985, to the end that the Court may make a fair determination as to the effect of television on the conduct of the trials.

ARTICLE I. APPLICABILITY OF RULES

Rule 1

Suspension of Rules

CASE NOTES

ARTICLE II. APPEALS FROM JUDGMENTS AND ORDERS OF SUPERIOR COURTS AND DISTRICT COURTS

Rule 2

Appeal in Civil Cases—How and When Taken

CASE NOTES

IN GENERAL

In considering whether to grant an appeal in a civil case, the court shall consider the following factors: (1) the nature of the case; (2) the importance of the issues presented; (3) the complexity of the legal questions; (4) the need for uniformity of the law; (5) the public interest; and (6) the cost of the appeal.

When the court grants an appeal, it shall set the case for oral argument and shall hear the case on the merits. The court may, in its discretion, grant a rehearing or a new trial.

The court may, in its discretion, grant a stay of execution of the judgment or order pending the appeal.

NORTH CAROLINA RULES OF APPELLATE PROCEDURE

Article IV. Direct Appeals from Administrative Agencies to Appellate Division

Rule

18. Taking Appeal; Record on Appeal — Composition and Settlement.
- (a) General.
 - (b) Time and Method for Taking Appeals.
 - (c) Composition of Record on Appeal.
 - (d) Settling the Record on Appeal.
 - (1) By Agreement.

Rule

- (2) By Appellee's Approval of Appellant's Proposed Record on Appeal.
- (3) By Conference or Agency Order; Failure to Request Settlement.
 - (e) Further Procedures.
 - (f) Extensions of Time.
- 19. [Reserved.]
- 20. Miscellaneous Provisions of Law Governing in Agency Appeals.

ARTICLE I. APPLICABILITY OF RULES

Rule 2

Suspension of Rules

CASE NOTES

- Applied** in *State v. Woodruff*, — N.C. App. —, 321 S.E.2d 1 (1984); *State v. Sanders*, — N.C. —, 321 S.E.2d 836 (1984); *State v. Albert*, — N.C. —, 324 S.E.2d 233 (1985); *State v. Todd*, — N.C. —, 326 S.E.2d 249 (1985).
- Cited** in *Stanley v. Nationwide Mut. Ins. Co.*, — N.C. App. —, 321 S.E.2d 920 (1984).

ARTICLE II. APPEALS FROM JUDGMENTS AND ORDERS OF SUPERIOR COURTS AND DISTRICT COURTS

Rule 3

Appeal in Civil Cases—How and When Taken

CASE NOTES

I. IN GENERAL.

In calculating whether notice of appeal is timely given, the 10th day is not considered if it is a Saturday, Sunday, or legal holiday. In such case, the 10-day period runs at the end of the next day that is not a Saturday, Sunday, or legal holiday. *Hardy v. Floyd*, — N.C. App. —, 320 S.E.2d 320 (1984).

Notice Held Timely. — Notice of appeal filed on July 5, 1983, was timely, where the 10th day fell on Sunday, July 3, 1983, and the next day, July 4, 1983, was a legal holiday. *Hardy v. Floyd*, — N.C. App. —, 320 S.E.2d 320 (1984).

Applied in *Ingle v. Allen*, — N.C. App. —, 321 S.E.2d 588 (1984).

Rule 9

The Record on Appeal

CASE NOTES

I. IN GENERAL.

Applied in *Fortis Corp. v. Northeast Forest*

Prods., — N.C. App. —, 315 S.E.2d 537 (1984).

Rule 10

Exceptions and Assignments of Error in Record on Appeal

CASE NOTES

I. IN GENERAL.

Question Must Be Presented, etc. —

Appellate review depends on specific exceptions and proper assignments of error presented in the record on appeal. *Wade v. Wade*, — N.C. App. —, 325 S.E.2d 260 (1985).

The assignment of error must clearly disclose the question presented. A single assignment generally challenging the sufficiency of the evidence to support numerous findings of fact is broadside and ineffective. *Wade v. Wade*, — N.C. App. —, 325 S.E.2d 260 (1985).

Plain error must fall within these areas: (1) A fundamental error, meaning something so basic, so prejudicial, so lacking in its elements that justice cannot be done; or (2) a grave error, which must amount to a denial of a fundamental right of the accused; or (3) an error which has resulted in a miscarriage of justice; or (4) an error that denies appellant a fair trial; or (5) an error that seriously affects the fairness, integrity or public reputation of judicial proceedings; or (6) where it can be fairly said that the instructional mistake had a probable impact on the jury's finding that the defendant was guilty. *State v. Reilly*, — N.C. App. —, 321 S.E.2d 564 (1984).

To mitigate the potential harshness of subdivision (b)(2) of this rule, the plain error rule allows the appellate court to cure errors or defects affecting substantial rights which were not brought to the attention of the court below. This rule, however, is always to be applied cautiously and only in the exceptional case where the claimed error is a fundamental error. *State v. Oliver*, — N.C. App. —, 325 S.E.2d 682 (1985).

A motion for a new trial made under § 1A-1, Rule 59 is a substitute for the obligation of counsel to timely object to the jury instructions. *Hanna v. Brady*, — N.C. App. —, 327 S.E.2d 22 (1985).

Exceptions or specific assignments of error are not required where the question is whether summary judgment was properly granted. The appeal from the judgment is itself an exception thereto. *Vernon, Vernon, Wooten, Brown & Andrews v. Miller*, — N.C. App. —, 326 S.E.2d 316 (1985).

Applied in *Smith-Douglass, Div. of Borden Chem., Borden, Inc. v. Kornegay*, — N.C. App. —, 318 S.E.2d 895 (1984); *Waynick Constr., Inc. v. York*, — N.C. App. —, 319 S.E.2d 304 (1984); *Spencer v. Spencer*, — N.C. App. —, 319 S.E.2d 636 (1984); *State v. Tarrant*, — N.C. App. —, 320 S.E.2d 291 (1984); *State v. McGinnis*, — N.C. App. —, 320 S.E.2d 297 (1984); *State v. Baker*, — N.C. —, 320 S.E.2d 670 (1984); *State v. Woodruff*, — N.C. App. —, 321 S.E.2d 1 (1984); *Brooks v. Butler*, — N.C. App. —, 321 S.E.2d 440 (1984); *State v. Bethea*, — N.C. —, 321 S.E.2d 520 (1984); *State v. Hamlet*, — N.C. —, 321 S.E.2d 837 (1984); *State v. Dorsey*, — N.C. App. —, 322 S.E.2d 405 (1984); *State v. Goodman*, — N.C. App. —, 322 S.E.2d 408 (1984); *State v. Southern*, — N.C. App. —, 322 S.E.2d 617 (1984); *Powe v. Odell*, — N.C. —, 322 S.E.2d 762 (1984); *Clifford v. River Bend Plantation, Inc.*, — N.C. —, 323 S.E.2d 23 (1984); *State v. Baize*, — N.C. App. —, 323 S.E.2d 36 (1984); *In re Will of Leonard*, — N.C. App. —, 323 S.E.2d 377 (1984); *State v. Washington*, — N.C. App. —, 323 S.E.2d 420 (1984); *Goforth Properties, Inc. v. Town of Chapel Hill*, — N.C. App. —, 323 S.E.2d 427 (1984); *State v. Upright*, — N.C. App. —, 323 S.E.2d 479 (1984); *In re Byrd*, — N.C. App. —,

324 S.E.2d 273 (1985); *Freeman v. St. Paul Fire & Marine Ins. Co.*, — N.C. App. —, 324 S.E.2d 307 (1985); *State v. Joyner*, — N.C. —, 324 S.E.2d 841 (1985); *State v. Young*, — N.C. —, 325 S.E.2d 181 (1985); *Pittman v. First Protection Life Ins. Co.*, — N.C. App. —, 325 S.E.2d 287 (1985); *State v. Jones*, — N.C. App. —, 325 S.E.2d 309 (1985); *State v. Hall*, — N.C. App. —, 325 S.E.2d 639 (1985); *Phillips v. Boling Co.*, — N.C. App. —, 326 S.E.2d 76 (1985); *Jackson v. Housing Auth.*, — N.C. App. —, 326 S.E.2d 295 (1985); *State v. Marlowe*, — N.C. App. —,

326 S.E.2d 351 (1985); *Ferguson v. Croom*, — N.C. App. —, 326 S.E.2d 373 (1985); *State v. Barranco*, — N.C. App. —, 326 S.E.2d 903 (1985).

Stated in *Department of Transp. v. Combs*, — N.C. App. —, 322 S.E.2d 602 (1984).

Cited in *State v. Bates*, — N.C. App. —, 319 S.E.2d 683 (1984); *State v. Brown*, — N.C. —, 321 S.E.2d 856 (1984); *Akzona, Inc. v. American Credit Indem. Co.*, — N.C. App. —, 322 S.E.2d 623 (1984); *State v. Kornegay*, — N.C. —, 326 S.E.2d 881 (1985).

Rule 11

Settling the Record on Appeal

CASE NOTES

Applied in *Ingle v. Allen*, — N.C. App. —, 321 S.E.2d 588 (1984).

ARTICLE III. REVIEW BY SUPREME COURT OF APPEALS ORIGINALLY DOCKETED IN COURT OF APPEALS: APPEALS OF RIGHT; DISCRETIONARY REVIEW

Rule 16

Scope of Review of Decisions of Court of Appeals

CASE NOTES

Cited in *Jones v. All Am. Life Ins. Co.*, — N.C. —, 325 S.E.2d 237 (1985).

ARTICLE IV. DIRECT APPEALS FROM ADMINISTRATIVE AGENCIES TO APPELLATE DIVISION

Rule 18

Taking Appeal; Record on Appeal—Composition and Settlement

(a) **General.** Appeals of right from administrative agencies, boards, or commissions (hereinafter "agency") directly to the appellate division under G.S. 7A-29 shall be in accordance with the procedures provided in these rules for appeals of right from the courts of the trial divisions, except as hereinafter provided in this Article.

(b) Time and Method for Taking Appeals.

- (1) The times and methods for taking appeals from an agency shall be as provided in this Rule 18 unless the statutes governing the agency provide otherwise, in which case those statutes shall control.
- (2) Any party to the proceeding may appeal from a final agency determination to the appropriate court of the appellate division for alleged errors of law by filing and serving a notice of appeal within 30 days after receipt of a copy of the final order of the agency. The final order of the agency is to be sent to the parties by Registered or Certified Mail. The notice of appeal shall specify the party or parties taking the appeal; shall designate the final agency determination from which appeal is taken and the court to which appeal is taken; and shall be signed by counsel of record for the party or parties taking the appeal, or by any such party not represented by counsel of record.

(c) Composition of Record on Appeal. The record on appeal in appeals from any agency shall contain: (i) an index of the contents of the record, which shall appear as the first page thereof; (ii) a copy of the summons with return, notice of hearing, or other papers showing jurisdiction of the agency over persons or property sought to be bound in the proceeding, or a statement showing same; (iii) copies of all other notices, pleadings, petitions, or other papers required by law or rule of the agency to be filed with the agency to present and define the matter for determination; (iv) a copy of any findings of fact and conclusions of law and a copy of the order, award, decision, or other determination of the agency from which appeal was taken; (v) so much of the evidence taken before the agency or before any division, commissioner, deputy commissioner, or hearing officer of the agency, set out in the form provided in Rule 9(c)(1), as is necessary for an understanding of all errors assigned, or a statement specifying that the verbatim transcript of proceedings is being filed with the record pursuant to Rule 9(c)(2) and (3); (vi) where the agency has reviewed a record of proceedings before a division, or an individual commissioner, deputy commissioner, or hearing officer of the agency, copies of all items included in the record filed with the agency which are necessary for an understanding of all errors assigned; (vii) copies of all other papers filed and statements of all other proceedings had before the agency or any of its individual commissioners, deputies, or divisions which are necessary to an understanding of all errors assigned unless they appear in the verbatim transcript of proceedings which is being filed pursuant to Rule 9(c)(2) and (3); (viii) a copy of the notice of appeal from the agency, of all orders establishing time limits relative to the perfecting of the appeal, of any order finding a party to the appeal to be a civil pauper, and of any agreement, notice of approval, or order settling the record on appeal and settling the verbatim transcript of proceedings if one is filed pursuant to Rule 9(c)(2) and (3); and (ix) exceptions and assignments of error to the actions of the agency, set out as provided in Rule 10.

(d) Settling the Record on Appeal. The record on appeal may be settled by any of the following methods:

- (1) **By Agreement.** Within 60 days after appeal is taken, the parties may by agreement entered in the record on appeal settle a proposed record on appeal prepared by any party in accordance with this Rule 18 as the record on appeal.
- (2) **By Appellee's Approval of Appellant's Proposed Record on Appeal.** If the record on appeal is not settled by agreement under Rule 18(d)(1), the appellant shall, within 60 days after appeal is taken, file in the office of the agency head and serve upon all other parties a proposed record on appeal constituted in accordance with the provisions of Rule 18(c). Within 30 days after service of the proposed record

on appeal upon him, an appellee may file in the office of the agency head and serve upon all other parties a notice of approval of the proposed record on appeal, or objections, amendments, or a proposed alternative record on appeal. If all appellees within the times allowed them either file notices of approval or fail to file either notices of approval or objections, amendments, or proposed alternative records on appeal, appellant's proposed record on appeal thereupon constitutes the record on appeal.

(3) **By Conference or Agency Order; Failure to Request Settlement.**

If any appellee timely files amendments, objections, or a proposed alternative record on appeal, the appellant or any other appellee, within 10 days after expiration of the time within which the appellee last served might have filed, may in writing request the agency head to convene a conference to settle the record on appeal. A copy of that request, endorsed with a certificate showing service on the agency head, shall be served upon all other parties. If only one appellee or only one set of appellees proceeding jointly have so filed and no other party makes timely request for agency conference or settlement by order, the record on appeal is thereupon settled in accordance with the one appellee's, or one set of appellees', objections, amendments, or proposed alternative record on appeal. If more than one appellee proceeding separately have so filed, failure of the appellant to make timely request for agency conference or for settlement by order results in abandonment of the appeal as to those appellees, unless within the time allowed an appellee makes request in the same manner.

Upon receipt of a request for settlement of the record on appeal, the agency head shall send written notice to counsel for all parties setting a place and time for a conference to settle the record on appeal. The conference shall be held not later than 15 days after service of the request upon the agency head. The agency head or his delegate shall settle the record on appeal by order entered not more than 20 days after service of the request for settlement upon the agency; provided, however, that when the agency head is a party to the appeal, the agency head shall forthwith request the Chief Judge of the Court of Appeals or the Chief Justice of the Supreme Court, as appropriate, to appoint a referee to settle the record on appeal. The referee so appointed shall proceed after conference with all parties to settle the record on appeal in accordance with the terms of these Rules and the appointing order.

Nothing herein shall prevent settlement of the record on appeal by agreement of the parties at any time within the times herein limited for settling the record by agency order.

(e) **Further Procedures.** Further procedures for perfecting and prosecuting the appeal shall be as provided by these Rules for appeals from the courts of the trial divisions.

(f) **Extensions of Time.** The times provided in this Rule for taking any action may be extended in accordance with the provisions of Rule 27(c). (Amended June 21, 1977; October 7, 1980, eff. January 1, 1981; February 27, 1985, eff. March 15, 1985.)

Editor's Note. — The order of the Supreme Court of February 27, 1985, which amended this rule and Rule 20 and deleted Rule 19, provides that inasmuch as the rules affected make the procedures for direct appeals from administrative agencies to the appellate division con-

sistent with the rules for bringing appeals from the courts of the trial division which were amended on November 27, 1984, to be effective February 1, 1985, the amendments of February 27, 1985, shall be applicable to all appeals in which the notice of appeal is filed on or after March 15, 1985.

Rule 19**[Reserved]**

Editor's Note. — Rule 19 was repealed by order of February 27, 1985, effective March 15, 1985.

The order of the Supreme Court of February 27, 1985, which repealed this section and amended Rules 18 and 20, provides that inasmuch as these rules make the procedures for direct appeals from administrative agencies

to the appellate division consistent with the rules for bringing appeals from the courts of the trial division which were amended on November 27, 1984, to be effective February 1, 1985, the amendments adopted February 27, 1985, shall be applicable to all appeals in which the notice of appeal is filed on or after March 15, 1985.

Rule 20**Miscellaneous Provisions of Law Governing in Agency Appeals**

Specific provisions of law pertaining to stays pending appeals from any agency to the appellate division, to pauper appeals therein, and to the scope of review and permissible mandates of the Court of Appeals therein shall govern the procedure in such appeals notwithstanding any provisions of these rules which may prescribe a different procedure. (Amended February 27, 1985, eff. March 15, 1985.)

Editor's Note. — The order of the Supreme Court of February 27, 1985, which amended this rule and Rule 18 and repealed Rule 19, provides that inasmuch as the rules affected make the procedures for direct appeals from administrative agencies to the appellate division consistent with the rules for bringing

appeals from the courts of the trial division which were amended on November 27, 1984, to be effective February 1, 1985, the amendments of February 27, 1985, shall be applicable to all appeals in which the notice of appeal is filed on or after March 15, 1985.

ARTICLE V. EXTRAORDINARY WRITS**Rule 21****Certiorari****CASE NOTES****I. IN GENERAL.**

Applied in *Stone v. Martin*, — N.C. App. —, 318 S.E.2d 108 (1984); *Department of Social Servs. v. Johnson*, — N.C. App. —, 320 S.E.2d 301 (1984); *In re State*, — N.C. App. —, 323 S.E.2d 466 (1984).

Stated in *State v. Cook*, — N.C. —, 323 S.E.2d 928 (1984); *State v. Huggins*, — N.C. —, 323 S.E.2d 928 (1984); *State v. Owens*, — N.C. —, 323 S.E.2d 928 (1984).

Cited in *State v. Couch*, — N.C. —, 325 S.E.2d 634 (1985).

Rule 22

Mandamus and Prohibition

CASE NOTES

Cited in State ex rel. Edmisten v. Tucker, — N.C. —, 323 S.E.2d 294 (1984).

ARTICLE VI. GENERAL PROVISIONS

Rule 25

Dismissal for Failure to Comply with Rules

CASE NOTES

I. IN GENERAL.

Construction of Second Sentence. — The title and first and third sentences of this rule clearly indicate that the motions described in the second sentence are only those for failure to comply with the Rules of Appellate Procedure or with court orders requiring action to perfect the appeal. The commentary makes this interpretation even clearer. Notably absent from the commentary is any suggestion that the drafters intended to alter existing case law. Estrada v. Jaques, — N.C. App. —, 321 S.E.2d 240 (1984).

Taken out of context, the second sentence of this rule might provide the trial court with authority to dismiss interlocutory appeals. However, elementary principles of construction require that words and phrases be interpreted contextually and in harmony with the underlying purposes of the whole. Estrada v. Jaques, — N.C. App. —, 321 S.E.2d 240 (1984).

The trial division possesses limited authority to dismiss appeals under this rule. Estrada v. Jaques, — N.C. App. —, 321 S.E.2d 240 (1984).

Rule 27

Computation and Extension of Time

CASE NOTES

In calculating whether notice of appeal is timely given, the 10th day is not considered if it is a Saturday, Sunday, or legal holiday. In such case, the 10-day period runs at the end of the next day that is not a Saturday, Sunday, or legal holiday. Hardy v. Floyd, — N.C. App. —, 320 S.E.2d 320 (1984).

Notice of Appeal Held Timely. — Notice of appeal filed on July 5, 1983, was timely, where the 10th day fell on Sunday, July 3, 1983, and the next day, July 4, 1983, was a legal holiday. Hardy v. Floyd, — N.C. App. —, 320 S.E.2d 320 (1984).

Rule 28

Briefs: Function and Content

CASE NOTES

I. IN GENERAL.

Applied in Brooks v. Butler, — N.C. App. —,

321 S.E.2d 440 (1984); Miller v. Henderson, — N.C. App. —, 322 S.E.2d 594 (1984); In re Will of Leonard, — N.C. App. —, 323 S.E.2d 377

(1984); Goforth Properties, Inc. v. Town of Chapel Hill, — N.C. App. —, 323 S.E.2d 427 (1984); Doby v. Lowder, — N.C. App. —, 324 S.E.2d 26 (1984); Pittman v. First Protection Life Ins. Co., — N.C. App. —, 325 S.E.2d 287 (1985); Sperry Corp. v. Patterson, — N.C. App. —, 325 S.E.2d 642 (1985); State v. Castleberry, — N.C. App. —, 326 S.E.2d 312 (1985); Metcalf v. McGuinn, — N.C. App. —, 327 S.E.2d 51 (1985).

Cited in Wake County ex rel. Denning v. Ferrell, — N.C. App. —, 321 S.E.2d 913 (1984); Stanley v. Nationwide Mut. Ins. Co., — N.C. App. —, 321 S.E.2d 920 (1984); Warmack v. Cooke, — N.C. App. —, 322 S.E.2d 804 (1984); Yassoo Enters., Inc. v. North Carolina Joint Underwriting Ass'n, — N.C. App. —, 325 S.E.2d 677 (1985).

Rule 31

Petition for Rehearing

CASE NOTES

Applied in Drummond v. Cordell, — N.C. App. —, 326 S.E.2d 292 (1985).

Stated in Smith v. Nationwide Mut. Ins. Co., — N.C. App. —, 324 S.E.2d 868 (1985).

Rule 34

Frivolous Appeals: Costs

CASE NOTES

The appellate division possesses sufficient authority to dispose of interlocutory appeals which do not affect a substantial right by dismissal. It has express authority to do so under this rule on motion of the parties if the appeal is frivolous or taken solely for purposes of delay. Or it may exercise its general authority in response to motions filed under the general motions provision (Rule 37). Or the

appellate division may dismiss upon its own motion as part of its general duty to apply the laws governing the right to appeal. Estrada v. Jaques, — N.C. App. —, 321 S.E.2d 240 (1984).

Motions to dismiss appeals for being interlocutory should properly be filed after the record on appeal is filed in the appellate court. Estrada v. Jaques, — N.C. App. —, 321 S.E.2d 240 (1984).

Rule 37

Motions in Appellate Courts

CASE NOTES

I. IN GENERAL.

The appellate division possesses sufficient authority to dispose of interlocutory appeals which do not affect a substantial right by dismissal. It has express authority to do so under Rule 34 on motion of the parties if the

appeal is frivolous or taken solely for purposes of delay. Or it may exercise its general authority in response to motions filed under the general motions provision (this rule). Or the appellate division may dismiss upon its own motion as part of its general duty to apply the

laws governing the right to appeal. Estrada v. Jaques, — N.C. App. —, 321 S.E.2d 240 (1984).
Motions to dismiss appeals as being interlocutory should properly be filed after the

record on appeal is filed in the appellate court. Estrada v. Jaques, — N.C. App. —, 321 S.E.2d 240 (1984).

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RULES, REGULATIONS AND ORGANIZATION OF THE NORTH CAROLINA STATE BAR

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Appendices.

Appendix I. Rules of Procedure. Client Security Fund of North Carolina State Bar.

ARTICLE VI.

Meetings of the Council.

§ 5. Standing Committees of the Council.

Within 20 days after his election, the President of the Council shall select the standing committees to serve for one year beginning January 1 of the year succeeding his election which said committees shall consist of:

c. Committee on Grievances. Grievance Committee of not less than 15 members, one of whom shall be designated as Chairman. At least one Vice-Chairman shall be designated. The Committee shall have as members at least three councillors from each of the judicial divisions of the State. The Grievance Committee shall have the powers and duties set forth in Article IX of these rules, and shall report on the status of grievances, investigations and complaints at regular or special meetings of the Council as the Executive Committee may direct. (Amended March 1, 1956; January 20, 1961; October 1, 1968; November 4, 1975; February 3, 1976; January 30, 1985.)

m. Committee to Study the Competence of New Admittees. The purpose is to give assistance to new admittees to improve their practical skills and enhance their ability to serve the public competently. (Added December 4, 1984.)

Only Part of Rule Set Out. — As the rest of the rule was not affected by the amendments, only subdivisions c and m are set out.

ARTICLE IX.

Discipline and Disbarment of Attorneys.

Determination of Disability.

§ 12. Investigations; Initial Determination.

(5) For reasonable cause, the Chairman of the Grievance Committee may issue subpoenas to compel the attendance of witnesses, including the accused, for examination concerning the grievance and may compel the production of

books, papers, and other documents or writings deemed necessary or material to the inquiry. Each subpoena shall be issued by the Chairman of the Grievance Committee, or by the Secretary at the direction of the Chairman. The Counsel, Assistant Counsel, Investigator, or any members of the Grievance Committee designated by the Chairman may examine any such witness under oath or otherwise.

(Amended January 30, 1985.)

Only Part of Rule Set Out. — As the rest of the rule was not affected by the amendment, only subdivision (5) thereof is set out.

§ 13. Preliminary Hearing.

(7) At any preliminary hearing held by the Grievance Committee, a quorum of one-half of the members shall be required to conduct any business. Affirmative vote of a majority of members present shall be necessary for a finding that probable cause exists. The Chairman shall not be counted for quorum purposes and shall be eligible to vote regarding the disposition of any grievance only in case of a tie among the regular voting members.

(Amended May 11, 1977; January 24, 1978; August 28, 1984; January 30, 1985.)

Only Part of Rule Set Out. — As the rest of the rule was not affected by the amendment, only subdivision (7) thereof is set out.

§ 14. Formal Hearing.

CASE NOTES

Applied in *North Carolina State Bar v. Sheffield*, — N.C. App. —, 326 S.E.2d 320 (1985).

§ 23. Imposition of Discipline; Findings of Incapacity or Disability; Notice to Courts.

(A) (1) Reprimand. A letter of reprimand shall be prepared by the Chairman of the Grievance Committee or the Chairman of the hearing committee of the Disciplinary Hearing Commission depending upon the agency ordering the reprimand. The letter of reprimand shall be served upon the accused attorney or defendant and a copy shall be filed with the Secretary and shall be considered confidential.

(2) Public Censure, Suspension, or Disbarment. The Chairman of the hearing committee of the Disciplinary Hearing Commission or the Chairman of the Grievance Committee shall file the order of public censure, suspension or disbarment with the Secretary. The Secretary shall cause a certified copy of the order to be entered upon the judgment docket of the superior court of the county wherein is located the last address listed on the register of members by the disciplined member and filed with the Clerk of the Supreme Court of North Carolina. A judgment of suspension or disbarment shall be effective throughout the State.

(Amended May 11, 1977; January 24, 1978; June 6, 1978; March 6, 1984; January 30, 1985.)

Only Part of Rule Set Out. — As the rest of the rule was not affected by the amendment, only subdivision A thereof is set out.

APPENDIX I.
RULES OF PROCEDURE
CLIENT SECURITY FUND OF NORTH
CAROLINA STATE BAR

I. Definitions.

For the purpose of these rules of procedure, the following definitions shall apply:

1. The "Board" shall mean the Client Security Fund Board of Trustees.
2. The "Fund" shall mean the Client Security Fund of the North Carolina State Bar.
3. An "attorney" shall mean one who, at the time of the act complained of, was licensed by the North Carolina State Bar. The fact that the act complained of took place outside the State of North Carolina does not necessarily mean that the attorney was not engaged in the practice of law in North Carolina.
4. "Applicant" shall mean a person who has suffered a reimbursable loss because of the dishonest conduct of an attorney and has filed an application for reimbursement.
5. "Dishonest conduct" shall mean wrongful acts committed by an attorney against an applicant in the manner of embezzlement, the wrongful taking or conversion of monies or other property.
6. "Reimbursable losses":
 - (a) "Reimbursable losses" are only those losses of money or other property which meet all of the following tests:
 - (i) The dishonest conduct which occasioned the loss occurred on or after January 1, 1985.
 - (ii) The loss was caused by the dishonest conduct of an attorney acting either as an attorney or in a fiduciary capacity customary to the private practice of law in the matter in which the loss arose as set out in No. 3 of definitions above.
 - (iii) That it appears to the Board that the applicant has exhausted all viable means to collect applicant's losses and has complied with these rules.
 - (b) The following shall be excluded from "reimbursable losses":
 - (i) Losses of spouses, children, parents, grandparents, siblings, partners, associates and employees of attorney(s) causing the losses.
 - (ii) Losses covered by any bond, surety agreement, or insurance contract to the extent covered thereby.
 - (iii) Losses which have been otherwise received from or paid by or on behalf of the attorney who committed the dishonest conduct. (Amended February 27, 1985.)

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§23.

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CODE OF PROFESSIONAL RESPONSIBILITY OF THE NORTH CAROLINA STATE BAR

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and Competence of the Legal Profession**

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DR1-102 Misconduct.

CASE NOTES

Applied in North Carolina State Bar v.
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(1985).

CANON 2

**A Lawyer Should Assist the Legal Profession in Fulfilling
Its Duty to Make Legal Counsel Available**

DISCIPLINARY RULES

DR2-109 Withdrawal from Employment.

CASE NOTES

Applied in North Carolina State Bar v.
Sheffield, — N.C. App. —, 326 S.E.2d 320
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CANON 7

**A Lawyer Should Represent a Client Zealously
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ETHICAL CONSIDERATIONS

Duty of the Lawyer to the Adversary System of Justice

EC7-24

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Cited in *Universal Marine Ins. Co. v. Beacon Ins. Co.*, 592 F. Supp. 948 (W.D.N.C. 1984).

DISCIPLINARY RULES**DR7-102 Representing a Client within the Bounds of the Law.****CASE NOTES**

Applied in *Nelson v. Piedmont Aviation, Inc.*, 750 F.2d 1234 (4th Cir. 1984).

CANON 9**A Lawyer Should Avoid Even the Appearance of Professional Impropriety****DISCIPLINARY RULES****DR9-102 Preserving Identity of Funds and Property of a Client.****CASE NOTES**

Applied in *North Carolina State Bar v. Sheffield*, — N.C. App. —, 326 S.E.2d 320 (1985).

LOCAL RULES OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Rule	Rule
22(b). Death penalty cases and motions for stay of execution.	35. In banc proceedings.
28(a). Consolidated cases and briefs.	46(a). Legal assistance to indigents by law students.
28(b). Briefs and joint appendix in cross appeals.	

Rule 22(b). Death penalty cases and motions for stay of execution.

Whenever a petition for writ of habeas corpus in which a sentence of death is involved is filed in the district court or the Court of Appeals, the petitioner shall file with his petition a statement certifying the existence of a sentence of death and the emergency nature of the proceedings and listing any proposed date of execution, any previous cases filed by petitioner in federal court and any cases filed by petitioner pending in any other court. The clerk of the district court shall immediately forward to the Court of Appeals a copy of any such statement filed, and shall immediately notify by telephone the Court of Appeals upon issuance of a final order in that case. If a notice of appeal is filed, the clerk of the district court shall transmit the available record forthwith. The clerk of the Court of Appeals will maintain a special docket for such cases and these cases shall be presented to the Court of Appeals on an expedited basis.

Any motion for stay of execution shall be considered initially in conjunction with any pending application for a certificate of probable cause. Should a party file a motion to stay execution or a motion to vacate an order granting a stay of execution, the following documents shall accompany such motion:

1. The complaint or petition to the district court;
2. Each brief or memorandum of authorities filed by either party in the district court;
3. Any available transcript of proceedings before the district court;
4. The memorandum opinion giving the reasons advanced by the district court for denying relief;
5. The district court judgment denying relief;
6. The application to the district court for a certificate of probable cause to appeal;
7. The application to the district court for stay;
8. The certificate of probable cause or order denying a certificate of probable cause in matters originating in state courts;
9. The district court order granting or denying a stay and a statement of reasons for its action; and
10. A copy of the docket entries of the district court. (Added June 1, 1984; Amended eff. February 6, 1985.)

Rule 28(a). Consolidated cases and briefs.

Related appeals or petitions for review will be consolidated in the office of the clerk, with notice to all parties, at the time a briefing schedule is established. One brief shall be permitted per side, including parties permitted to intervene, in all cases consolidated by court order, unless leave to the contrary is granted

upon good cause shown. In consolidated cases lead counsel shall be selected by the attorneys on each side and that person's identity made known in writing to the clerk within seven (7) days of the date of the order of consolidation. In the absence of an agreement by counsel, the clerk shall designate lead counsel. The individual so designated shall be responsible for the coordination, preparation and filing of the briefs and appendix.

Editor's Note. — This rule was formerly designated as Rule 28, and was redesignated by the court as Rule 28(a) effective February 6, 1985.

Rule 28(b). Briefs and joint appendix in cross appeals.

Absent agreement of the parties, the party filing the first notice of appeal in a case with a cross appeal will be designated by the clerk as the appellant for purposes of the rules on briefing, appendix and oral argument. (Added eff. February 6, 1985.)

Rule 35. In banc proceedings.

(a) Suggestion for Rehearing in Banc.

A suggestion for rehearing in banc must be made at the same time, and in the same document, as a petition for rehearing. The fact of such suggestion shall be stated plainly in the title of the petition. The petition and suggestion will be distributed to all active and senior judges of the Court, and to any visiting judge who may have heard and decided the appeal.

(b) Decision to Hear or Rehear a Cause in Banc.

A majority, but no fewer than four, of all eligible, active and participating judges may grant a hearing or rehearing in banc. Unless a judge requests that a poll be taken on the suggestion none will be. If no poll is requested, the panel's order on a petition for rehearing will bear the notation that no member of the Court requested a poll. If a poll is requested, the order will reflect the vote of each participating judge. A judge who joins the Court after a suggestion has been submitted to the Court, and before an order has been entered, will be eligible to vote on the decision to hear or rehear a cause in banc.

(c) Decision of Causes Heard or Reheard in Banc.

An in banc hearing will be before all eligible, active and participating judges of the Court, but no fewer than six. An in banc rehearing will be before all eligible, active and participating judges, and any senior judge of the Court who sat on the panel that heard the cause originally. A judge who joins the Court after argument or submission of a cause to an in banc Court will not be eligible to participate in the decision of the cause. Granting of rehearing in banc vacates the previous panel judgment and opinion; the rehearing is a review of the judgment of the district court and not a review of the judgment of the panel. (Added eff. December 6, 1984.)

Rule 46(a). Legal assistance to indigents by law students.

An eligible law student with the written consent of an indigent and his attorney of record may appear in this court on behalf of that indigent in any case. An eligible law student with the written consent of the United States Attorney or his authorized representative may also appear in this court on behalf of the United States in any case. An eligible law student with the written consent of the State Attorney General or his authorized representative

may also appear in this court on behalf of that state in any case. In each case, the written consent shall be filed with the clerk.

An eligible law student may assist in the preparation of briefs and other documents to be filed in this court, but such briefs or documents must be signed by the attorney of record. He may also participate in oral argument with leave of the court, but only in the presence of the attorney of record. The attorney of record shall assume personal professional responsibility for the law student's work and for supervising the quality of his work. He should be familiar with the case and prepared to supplement or correct any written or oral statement made by the student.

In order to make an appearance pursuant to this rule, the law student must:

1. Be duly enrolled in a law school approved by the American Bar Association;
2. Have completed legal studies amounting to at least four (4) semesters, or the equivalent if the school is on some basis other than a semester basis;
3. Be certified by the dean of his law school as being of good character and competent legal ability which certification shall be filed with the clerk. This certification may be withdrawn by the dean at any time by mailing notice to the clerk or by termination by this court without notice of hearing and without any showing of cause;
4. Be introduced to the court by an attorney admitted to practice before this court;
5. Neither ask for nor receive any compensation or remuneration of any kind for his services from the person on whose behalf he renders services, but this shall not prevent an attorney, legal aid bureau, law school, public defender agency, a state, or the United States from paying compensation to the eligible law student, nor shall it prevent any agency from making such charges for its services as it may otherwise properly require;
6. Certify in writing that he or she has read and is familiar with the Code of Professional Responsibility or Rules of Professional Conduct in force in the state in which the student's law school is located. (Amended October 3, 1984.)

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INTERNAL OPERATING PROCEDURES OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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- 22.3. Petitions for rehearing in death penalty cases.
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- to file a petition for rehearing to enable the Solicitor General's Office to review the merits of a case.
- 40.3. Submission of petitions for rehearing to the Court.
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I.O.P. 22.2. Death penalty cases.

Once a notice of appeal has been filed in a case involving a sentence of death where an execution date has been set, a panel of three judges will be promptly identified for consideration of all matters related to the case. At least one member of the panel selected will be from the state where petitioner's conviction arose, unless such judge or judges are unavailable. The position of coordinator of case information in death penalty cases has been established in the Clerk's Office of the Court of Appeals for the purpose of establishing personal liaison with district court personnel and counsel to aid in the expeditious treatment of appeals involving a sentence of death. An expedited briefing schedule will be established when necessary to allow the court the opportunity to review all issues presented. (Amended June 1, 1984; amended eff. February 6, 1985.)

I.O.P. 22.3. Petitions for rehearing in death penalty cases.

All death penalty cases. Once the court's mandate has issued in a death penalty case, any petition for rehearing (with or without a suggestion for rehearing in banc) should be accompanied by a motion to recall the mandate and a motion to stay the execution.

Counsel should be aware that the process for distributing materials by the clerk's office ordinarily requires a minimum of three days for all members of the court to receive a petition. Generally, the court will not enter a stay of execution solely to allow for additional time for counsel to prepare, or for the court to consider, a petition for rehearing, with or without a suggestion for rehearing in banc. Consequently, counsel should take all possible steps to assure that any such petition is filed sufficiently in advance of the scheduled execution date to allow it to be considered by the court. Counsel should notify the clerk's office promptly of their intention to file a petition for rehearing so that arrangements can be made in advance for the most expeditious consideration of the matter by the court.

Emergency petitions. In extraordinary circumstances, when the petition cannot be filed earlier than three days before a scheduled execution date, the clerk's office will endeavor to inform the members of the panel that issued the court's decision of the filing of a petition for rehearing (with or without a

suggestion for rehearing in banc) within a shorter period of time. At the direction of a panel member, similar efforts will be made to inform the full court of the matter. The clerk's office will give notice to counsel by telephone of the court's decision on such petitions. (Added eff. February 6, 1985.)

I.O.P. 28.2. Joint appeals/cross appeals and consolidations.

Where multiple parties are directed to file a consolidated brief, the joint brief shall not exceed 50 pages in length. Counsel on the same side of the case should confer and agree upon a means for assuring that the positions of all parties are addressed within the page limits allowed and that each council will have an opportunity to review and approve the consolidated brief before it is filed.

Motions to file separate briefs are not favored by the Court and are granted only upon a particularized showing of good cause, such as, but not limited to, cases in which the interests of the parties are adverse. Generally unacceptable grounds for requests to file separate briefs include representations that the issues presented require a brief in excess of 50 pages (appropriately addressed by a motion to exceed page limit), that counsel cannot coordinate their efforts due to different geographical locations, or that the participation of separate counsel in the proceedings below entitles each party to separate briefs on appeal.

If a motion to file separate briefs is granted, the number of pages allowed for such briefs may be limited by the Court. The parties shall continue to share the time allowed for oral argument. (Amended October 3, 1984.)

I.O.P. 28.3. Citation of additional authorities.

Counsel may, without leave of Court, present a letter drawing the Court's attention to supplemental authorities under Rule 28(j). An original and three copies of the letter should be filed with the clerk and a copy of the letter should be mailed to all counsel of record. No argument should be made in the letter. The Court may grant leave for or direct the filing of additional memoranda, which may include additional argument, before, during or after oral argument. (Amended October 3, 1984.)

I.O.P. 35.1. Additional copies of briefs and appendix for in banc hearing or rehearing.

The Court's order granting hearing or rehearing in banc may require the parties to file additional copies of the briefs and appendix. Each party will bear the initial cost of additional copies of its own briefs. The party that requested the hearing or rehearing in banc will bear the initial cost of filing additional copies of the appendix. In the event that cross petitions for hearing or rehearing in banc are granted, the parties will share equally the initial cost of preparing additional copies of the appendix. (Amended eff. December 6, 1984.)

I.O.P. 40.2. Applications from the United States for an extension of time within which to file a petition for rehearing to enable the Solicitor General's Office to review the merits of a case.

Applications from the United States for an extension of time within which to file a petition for rehearing before the Fourth Circuit will be reviewed on a case by case basis. If sufficient grounds for an extension appear, an extension

of up to 30 days will be granted. The need of the Office of the Solicitor General for time to conduct a thorough review of the merits of a case will be considered legitimate grounds for such an extension.

The order granting an extension of time will include a provision requiring the United States to notify the Office of the Clerk whenever it concludes, prior to the expiration of the time period, not to seek rehearing.

Upon receipt of notice from the United States that a petition will not be filed, the mandate of this court will issue forthwith, provided the notice is received at least 21 days after entry of judgment.

Should a private party seek an extension of time in a case in which the United States has been given additional time, an extension of equal duration will be given as a matter of course.

In cases decided adversely to the United States, the staff of the Clerk's Office will not send a petition for rehearing filed by a private party to the court until the 14-day period for United States' petition (or its request for an extension of time within which to file a petition) has run. (Added December 6, 1984.)

Editor's Note. — Former I.O.P. 40.2, Statement of Purpose, has been redesignated as I.O.P. 40.4.

I.O.P. 40.3. Submission of petitions for rehearing to the Court.

The Clerk's Office will hold any petition for rehearing, together with a suggestion for rehearing in banc, if any, until the time for filing all such petitions, or any extension thereof granted in the particular case, has run. Thereafter, all petitions for rehearing in the same case will be distributed to the Court simultaneously. (Added December 6, 1984.)

Editor's Note. — Former I.O.P. 40.3, Panel Rehearing, has been redesignated as I.O.P. 40.5.

I.O.P. 40.4. Statement of purpose.

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist:

1. A material factual or legal matter was overlooked in the decision.
2. A change in the law occurred after the case was submitted and was overlooked by the panel.
3. The opinion is in conflict with another decision of the court or of another court of appeals and the conflict is not addressed in the opinion.

A petition should only be made to direct the court's attention to one or more of the above situations. The points to be raised should be succinctly listed in counsel's statement of purpose and, if a petition lacks such a statement, it will be returned to counsel without filing.

Editor's Note. — I.O.P. 40.4 was formerly designated as I.O.P. 40.2.

I.O.P. 40.5. Panel rehearing.

The panel of judges who heard and decided the appeal will rule on the petition for rehearing. The panel may include a senior circuit judge, a district judge, or a visiting federal appellate judge sitting in the Fourth Circuit by designation. On receipt of the votes, the judge who authorized the opinion will direct the clerk to enter an appropriate order, setting forth the vote of the panel.

If a petition for rehearing is granted, the original judgment and opinion of the court are vacated and the case will be reheard before the original panel. The court may direct the filing of additional briefs, or the parties may seek leave of court to file additional briefs.

Editor's Note. — I.O.P. 40.5 was formally designated as I.O.P. 40.3.

I.O.P. 47.2. Judicial conference.

(f) Each member of the bar of the Fourth Circuit attending a judicial conference shall pay a registration fee in an amount fixed by the Court of Appeals, to be applied to the payment of the expenses of the conference as approved by the Chief Judge of the circuit. It is further provided that the Chief Judge may excuse the payment of the fee in individual cases. (Amended eff. February 6, 1985.)

Only Part of Rule Set Out. — As the rest of the rule was not affected by the amendment, only subdivision (f) is set out.

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**RULES OF THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT
OF NORTH CAROLINA**

I. General Rules

RULE 3.00. Court Schedule and Conduct of
Business.

3.02. Divisions of the District.

I. General Rules

Rule 3.00 Court Schedule and Conduct of Business.

3.02: *Divisions of the District.* There shall be five divisions of the court. Headquarters of each division and the counties comprising each division are as follows:

NAME OF DIVISION	HEADQUARTERS	COUNTIES	
Elizabeth City Division	Elizabeth City	Bertie	Hertford
		Camden	Northampton
		Chowan	Pasquotank
		Currituck	Perquimans
		Dare	Tyrrell
		Gates	Washington
		Halifax	
Fayetteville Division	Fayetteville	Cumberland	Sampson
New Bern Division	New Bern	Robeson	
		Beaufort	Lenoir
		Carteret	Martin
		Craven	Onslow
		Greene	Pamlico
		Hyde	Pitt
		Jones	
Raleigh Division	Raleigh	Edgecombe	Vance
		Franklin	Wake
		Granville	Wayne
		Harnett	Warren
		Johnston	Wilson
		Nash	
		Bladen	Duplin
Wilmington Division	Wilmington	Brunswick	New Hanover
		Columbus	Pender

(Amended December 19, 1984, eff. January 1, 1985.)

Only Part of Rule Set Out. — As the rest of the rule was not affected by the amendment, only 3.02 is set out.

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VI. COURT-ANNEXED ARBITRATION

RULE VII

Selection of the Arbitrator

For Selection by Agreement. If the parties file with the Private Adjudication Center a timely agreement pursuant to Rule 68(a)(4), upon filing an agreed upon arbitrator, the clerk of court shall thereupon appoint each party an arbitrator and give notice of the appointment to the arbitrator and the parties.

For Selection by the Private Adjudication Center. If no timely agreement pursuant to Rule 68(a)(4) is filed, the Private Adjudication Center shall send to each party a list of 5 proposed arbitrators, with names withheld. The Center shall notify each party to select one name from two proposed arbitrators or more than two parties, typing out the names. The Private Adjudication Center shall submit a larger list of proposed arbitrators so that the list is one greater than the total number of arbitrators who may be selected. Within 15 days of the Center's mailing of the list of proposed arbitrators, each party shall file with the Private Adjudication Center a statement striking two proposed arbitrators. From the proposed arbitrators who have not even struck, the Private Adjudication Center shall randomly select an arbitrator, who shall be appointed the arbitrator of each, and give notice of the appointment to the arbitrator and the parties. (Amended December 28, 1984, eff. January 1, 1985.)

Only Part of Rule 68(a)(4). In the case of one party not selected by the arbitrator, the arbitrator shall be appointed by the arbitrator.

RULES OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

VI. Court-Annexed Arbitration

RULE

605. Selection of the Arbitrator

- (a) Selection by Agreement
- (b) Selection by the Private Adjudication Center

VI. COURT-ANNEXED ARBITRATION

Rule 605

Selection of the Arbitrator

(a) **Selection by Agreement.** If the parties file with the Private Adjudication Center a timely statement pursuant to Rule 603(a)(4), identifying an agreed upon arbitrator, the clerk of court shall thereupon appoint such person as the arbitrator and give notice of the appointment to the arbitrator and the parties.

(b) **Selection by the Private Adjudication Center.** If no timely statement pursuant to Rule 603(a)(4) is filed, the Private Adjudication Center shall send to each party a list of 5 proposed arbitrators, with resumes enclosed. The Center shall notify each party of its right to strike two proposed arbitrators. (If more than two parties appear in the litigation, the Private Adjudication Center shall submit a larger list of proposed arbitrators, so that the list is one greater than the total number of arbitrators who may be stricken.) Within 15 days of the Center's mailing of the list of proposed arbitrators, each party may file with the Private Adjudication Center a statement striking two proposed arbitrators. From the proposed arbitrators who have not been stricken, the Private Adjudication Center shall designate an arbitrator, who shall be appointed by the clerk of court, and give notice of the appointment to the arbitrator and the parties. (Amended December 20, 1984, eff. January 1, 1985.)

Only Part of Rule Set Out. — As the rest of the rule was not affected by the amendment, only subdivisions (a) and (b) are set out.

Index to Rules of the United States District Court for the Middle District of North Carolina

A

ARBITRATION.

Selection of the arbitrator.

- Selection by agreement, Rule 605,
- (a).
- Selection by private adjudication center, Rule 605, (b).

RULES OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA

II. Bankruptcy Rules

Local Rule Referencing All Bankruptcy
Matters to the Bankruptcy Judge

and Providing for Bankruptcy
Court Clerk.

II. Bankruptcy Rules

Local Rule Referencing All Bankruptcy Matters to the Bankruptcy Judge and Providing for Bankruptcy Court Clerk.

(a) Bankruptcy Resolution. The purpose of this Rule is to convey to the bankruptcy judge of this district authority to act in bankruptcy matters and to provide for the bankruptcy court clerk under and in accord with the provisions of the "Bankruptcy Amendments and Federal Judgeship Act of 1984", and in the light and after consideration of Memoranda of the Administrative Office of the United States Courts dated June 28, 1984, July 20, 1984, and July 11, 1984.

The judges of the district court find and conclude that it is the clear intent of Congress to refer bankruptcy matters to bankruptcy judges, that the judge, clerk, and their staff have the specialized expertise necessary for the determination and handling of bankruptcy matters, all of which is in place for the continuation of the appropriate handling of the existing bankruptcy caseload, administratively and otherwise; and that the bankruptcy judge has this date certified to the Judicial Council of the Fourth Circuit and to the Director of the Administrative Office of the United States Court that the number of cases and proceedings pending within the jurisdiction under section 1334 of the "Bankruptcy Amendments and Federal Judgeship Act of 1984" within this judicial district warrants the appointment by the bankruptcy judge of an individual to serve as Clerk of such bankruptcy court.

Therefore, pursuant to the provisions of the "Bankruptcy Amendments and Federal Judgeship Act of 1984", the orderly conduct of the business of the court in the handling of bankruptcy matters requires this referral to the bankruptcy judge.

(b) Reference to the Bankruptcy Judge is hereby made of:

(1) All cases under Title 11 and all core proceedings arising under Title 11, or arising in a case under Title 11, subject to the reference exception and powers of the Bankruptcy Judge as set out in the provisions of the "Bankruptcy Amendments and Judgeship Act of 1984."

(2) All proceedings that are not core proceedings but that are otherwise related to a case under Title 11, subject to the reference exception and powers of the Bankruptcy Judge as set out in the provisions of the "Bankruptcy Amendments and Judgeship Act of 1984."

(c) Clerk of Court.

(1) The bankruptcy judge having certified the need for a bankruptcy clerk as provided for in Section 156 of the Act, all functions of the "clerk" as provided by law are hereby referenced to the bankruptcy clerk appointed by the bankruptcy judge.

WESTERN DISTRICT COURT RULES.

(d) Effective Date and Pending Cases. The rule shall become effective immediately, and shall apply to all cases governed by the Bankruptcy Act of 1898, and the Bankruptcy Code of 1978 as amended. Any bankruptcy pending before the bankruptcy judge on the effective date of this Rule shall be deemed referred to that judge. All bankruptcy matters filed on and after the effective date of this Rule shall be deemed automatically referred to that judge. (Added July 30, 1984.)

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

June 1, 1985

I, Lacy H. Thornburg, Attorney General of North Carolina, do hereby certify that the foregoing June, 1985, Supplement to the 1984 Rules Replacement Volume of the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

LACY H. THORNBURG

Attorney General of North Carolina

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